

Section 194Q - An Illustrated Analysis!

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Introduction

Finance Act, 2021 has introduced Section 194Q with effect from 1st July, 2021. In this Article, the author will present you practical insights for ensuring smooth transition in the implementation of Section 194Q. A variety of illustrations are given to understand the interplay of Section 194Q with Section 206C(1H) and other provisions of the Income Tax Act, 1961.

Briefly about Section 194Q

Who needs to comply: Buyer of Goods having total sales, gross receipts or turnover from the business of more than ₹ 10 crores during financial year immediately preceding the financial year in which purchase of goods is carried out from a resident seller;

When is the buyer liable to deduct TDS: If responsible for paying any sum for purchase of goods exceeding ₹ 50 lakhs from a resident seller excluding transaction on which:-

- tax is deductible under any of the provisions of this Act;
- TCS is collectible other than TCS u/s 206C(1H)

Point of TDS: Credit or payment whichever is earlier, credit even to suspense account also to be considered as 'credit';

TDS Rate: 0.1% on consideration for purchase of goods exceeding INR 50 lakhs;

Point of trigger: Purchase from a resident seller > ₹ 50 lakhs;

Amount on which TDS applicable: Sum Paid or Credited whichever is earlier during the year as reduced by Rs. 50 lakhs;

Briefly about Section 206C(1H)

Who needs to comply: Seller of Goods having total sales, gross receipts or turnover from the business of more than ₹ 10 crores during financial year immediately preceding the financial year in which sale of goods is carried out;

When is seller liable to collect TCS: When the seller receives any amount as consideration for sale of any goods exceeding ₹ 50 lakhs excluding:-

- Consideration for goods being exported;

- Consideration on which TCS u/s 206C(1), 206C(1F) or 206C(1G) is applicable;
- Buyer is liable to deduct TDS under any other provision of this Act including TDS u/s 194Q and has also deducted TDS (Twin condition applicable)

Point of TCS: Receipt of consideration;

TCS Rate: 0.1% on consideration for sale of goods;

Point of trigger: Sales to a buyer > ₹ 50 lakhs;

Amount on which TCS applicable: Total consideration received during the year as reduced by ₹ 50 lakhs;

Interplay between Section 194Q and Section 206C(1H)

- Transaction on which both sections are attracted is same i.e. Sale / Purchase of goods;
- Section 206C(1H) makes the seller responsible to collect TCS while Section 194Q requires Buyer to deduct TDS;
- If 194Q is applicable and TDS is deducted by the Buyer then 206C(1H) is not applicable as per second proviso to section 206C(1H);
- If both buyer and seller are covered by Section 194Q and Section 206C(1H) then generally only buyer need to deduct TDS, seller is not supposed to collect TCS as per Section 194Q(5);

Illustrations for cases that can occur during transition phase

Assumption:

- In all cases, Amount of Purchase or Sale > 50 lakhs;
- Turnover of both Buyer and Seller in Previous Year > ₹ 10 crores;

| Invoice Date | Date on which amount credited Buyer | Date on which Payment by made | TDS or TCS? | Basis |
|--------------|-------------------------------------|-------------------------------|-------------|---|
| 30.06.2021 | 30.06.2021 | 05.07.2021 | TCS | In this case TDS provisions doesn't get attracted since at the point of TDS, Section 194Q was not applicable thus TCS provisions will get attracted |
| 01.07.2021 | 01.07.2021 | 30.06.2021 | TCS | In this case TDS provisions doesn't get attracted since at the point of TDS, Section 194Q was not applicable thus TCS provisions will get attracted |
| 30.06.2021 | 01.07.2021 | 05.07.2021 | TDS | TDS provision overrides TCS provisions |

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|------------|------------|------------|-----|--|
| 01.07.2021 | 01.07.2021 | 05.07.2021 | TDS | TDS provision overrides TCS provisions |
|------------|------------|------------|-----|--|

Illustrations of interplay between 194Q and other TDS provisions and TCS provisions other than 206C(1H) apart from transition phase

Section 194Q(5) provides that “The provisions of this section shall not apply to a transaction on which:-

- tax is deductible under any of the provisions of this Act; and
- tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.]

View above, Amount on TDS u/s 194Q is applicable = Amount of total transactions during the year (-) Amount of total transaction on which TDS is deductible under any other provision or TCS other than 206C(1H) is applicable (-) ₹ 50 lakhs.

Case

- Buyer was having total sales, gross receipts or turnover from the business of more than ₹ 10 crores in Y0;
- (A) = Total value of transactions during the year with resident seller;
- (B) = Value of Transactions on which tax is deductible other than TDS u/s 194Q;
- (C) = Value of Transactions on tax is collectable other than TCS u/s 206C(1H);
- (D) = (A) - (B) - (C) - (₹ 50 lakhs), if negative then NIL else is the amount on which TDS u/s 194Q is to be deducted;

| (A) | (B) | (C) | (D) |
|------------|-----------|-----------|------------|
| ₹ 49 Lakhs | NIL | NIL | NIL |
| ₹ 52 lakhs | ₹ 3 lakhs | NIL | NIL |
| ₹ 52 lakhs | NIL | ₹ 3 lakhs | NIL |
| ₹ 55 lakhs | ₹ 3 lakhs | ₹ 3 lakhs | NIL |
| ₹ 60 lakhs | ₹ 3 lakhs | ₹ 3 lakhs | ₹ 4 lakhs |
| ₹ 60 lakhs | NIL | NIL | ₹ 10 lakhs |

Key Point:- It is to be noted that the condition of Section 194Q(5) only provides that “tax is deductible under any of the provisions of this Act”. It does not mandates actual deduction of Tax.

Illustrations of interplay between 206C(1H) and 194Q apart from transition phase

Case 1

- Sale / Purchase transactions are continuing between the two parties from Y0;
- In Y0 both the parties were having total sales, gross receipts or turnover from the business of **less than** ₹ 10 crores;
- In Y1 both the parties were having total sales, gross receipts or turnover from the business of **more than** ₹ 10 crores;

- At the end of Y1, the purchaser has already accounted invoices worth ₹ 10 lakhs for which payment is yet to be made;

| Transactions in Y2 | Payment made by buyer | TDS or TCS? | Remarks |
|--------------------|-----------------------|-------------|--|
| ₹ 45 lakhs | ₹ 51 lakhs | TCS | Buyer is “liable to deduct tax at source” since responsible to pay more than ₹ 50 lakhs during the year. But since transactions undertaken during the year were of ₹ 45 lakhs only hence will not be deducting TDS. Here seller will become liable to collect TCS since twin conditions not satisfied i.e. Buyer “liable to deduct” but has not deducted. Hence tax is to be collected by seller on ₹ 1 lakhs u/s 206C(1H). |
| ₹ 45 lakhs | ₹ 47 lakhs | NA | Here Buyer is neither “liable to deduct” nor seller is “liable to collect”. It is assumed that as per payment due dates only ₹ 47 lakhs were payable by the buyer. |
| ₹ 55 lakhs | ₹ 61 lakhs | TDS | Buyer needs to deduct tax on ₹ 5 lakhs u/s 194Q. |

Key points in analysis of above case studies

Meaning of term “liable to deduct tax at source u/s 194Q” as per author:- As per Section 194Q, a buyer (person who fulfils the definition) is only liable to deduct TDS once he is responsible for paying any sum exceeding ₹ 50 lakhs for purchase of goods in any previous year.

Meaning of term “responsible for paying” as per the author: This term should be considered from pure commercial purpose based on the due dates as per the agreement. In above case studies it is assumed that Invoices accounted but not paid were purely based on not agreement i.e. these are not due for payment. Further it is assumed that Invoice not accounted by the buyer are purely on the basis of Invoices not received from the seller.

Twin condition u/s 206C(1H): It is important to note that 2nd Proviso to Section 206C(1H) provides a twin condition:-

- If Buyer is liable to deduct tax; and
- Has deducted such amount;

Interpretational issues arising out of above case studies:

- What will be considered as “responsible for paying” needs to be clarified by CBDT;

As per liberal / literal interpretation of Section 194Q, TDS is to be deducted at the time of credit or payment whichever is earlier and amount of TDS is to be deducted is 0.1% of such amount exceeding ₹ 50 lakhs. So in above case studies, such sum only means sum which is having point of taxation in current year hence ₹ 10 lakhs outstanding at the start of Y2 should never be considered ideally;

Case 2:

- Sale / Purchase transactions are continuing between the two parties from Y0;

- In Y0 both the parties were having total sales, gross receipts or turnover from the business of **more than** ₹ 10 crores;
- During Y1, one transaction was in regards to Purchase of Software which is covered under HSN 4907 or 8523 under GST i.e. covered by the term “Goods” and further the transaction is also covered by Notification 21/2012 i.e. no TDS is to be deducted u/s 194J although tax is deductible u/s 194J.

Here:-

- Total value of transactions during the year with resident seller:- ₹ 60 lakhs
- Value of Transactions on which tax is to deductible u/s 194J but not deducted pursuant to Notification 21/2012:- ₹ 4 lakhs;
- Amount on which TDS u/s 194Q:- ₹ 6 lakhs;
- Amount on which TCS u/s 206C(1H):- ₹ 4 lakhs

Basis: - Seller has received a consideration of ₹ 60 lakhs while TDS is deducted only on ₹ 6 lakhs. Hence twin condition has been satisfied only for ₹ 6 lakhs thus seller shall be liable to collect TCS on ₹ 4 lakhs.

Certain FAQs over applicability of Section 194Q

1. Does 194Q apply on Import of Goods?

As per Section 194Q, Buyer is liable to deduct TDS if responsible for paying any sum to any resident for purchase of goods. Thus it does not exclude consideration for import of goods. However this purchase in the mode of import should be from resident seller i.e. it can be from PE of Indian Resident in a foreign country or High Sea Sale.

Thus 194Q can be applicable on Import of Goods subject to the fact that Seller is Indian Resident. Further in case seller is not Indian Resident, Buyer should check the provisions of Section 195.

2. Is TDS u/s 194Q required to be deducted on GST component as well?

Circular 17 of 2020:- TCS u/s 206C(1H) is to be collected also on GST portion.

Circular 23 of 2017:- TDS under Chapter XVII-B is not to be deducted on component of GST on services.

View above, none of the above circular covered whether TDS is to be deducted also on component of GST on goods. Thus ideally CBDT should come up with circular providing clarification and in absence of same TDS should be deducted on GST component as well. Otherwise a stand can be taken that at the time of Circular 23 of 2017 there was no TDS on goods and thus said clarification was only in respect to Services. In this view, provisions of Circular 23 of 2017 shall apply mutatis mutandis to Section 194Q as well and no TDS shall be deducted on GST component.

3. Is Seller any time liable to collect TCS if Buyer meets the definition provided u/s 194Q?

Yes, as can be seen in the illustrations shared.

4. Does 194Q apply to a non-resident buyer?

Explanation to Section 194Q(1) provides that the term “Buyer” excludes a person as being notified by Central Government in official gazette. However no exception provided as on date thus if conditions of Section 194 Q are met then even a non-resident buyer needs to comply with Section 194Q.

5. *Is 194Q applicable on services as well?*

Provisions of Section 194Q provides that TDS is on consideration for purchase of Goods. However the term “Goods” has not been defined. Thus the definition can be imported from CGST Act, 2017:-

Section 2(52) of CGST Act, 2017 provides that “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

Section 2(102) of CGST Act, 2017 provides that “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

View above, Section 194Q is not applicable on Services but can be considered as applicable on consideration paid for actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. Further any incidental payment related to purchase of goods such as freight insurance if paid to seller may also get covered.

6. *Does guidelines given by CBDT vide Circular 17 of 2020 applicable for Section 194Q?*

Guidelines given in Circular 17 of 2020 are specific to Section 206C(1H) cannot be imported for Section 194Q. However similar clarifications should be brought by CBDT for Section 194Q as well such as following clarifications:-

- Applicability of Section 194Q on transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation;
- Applicability of Section 194Q on transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC;
- For FY 2021-22, should the amount credited or paid prior to 1st July, 2021 is also to be considered or not;
- TDS compliance by Non-Resident in case of Export of Goods as well as Fuel purchased by Non-Resident Airlines at airports in India;
- Whether adjustment is to be allowed on Sales Return / Discount etc.

Concluding remarks by the Author

- Section 194Q and 206C(1H) can co-exist;
- Seller should obtain a declaration from the Buyer for each year that Buyer will deduct TDS u/s 194Q as per the provisions of Section 194Q and that the Buyer has met the definition provided of term “Buyer” in Section 194Q.

- Irrespective of declaration, Seller should also keep a track of actual deduction of tax.
- Certain clarifications / guidelines should come from Income Tax Department prior to 1st July, 2021;
- For transition phase Seller should obtain a confirmation from Buyers for each Invoices raised upto 30th June payment of which are outstanding as on said date to ascertain liability of TCS.